IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

FAO(Ord) No. 45 of 2000.

Judgement reserved on: 13.3.2006

Date of decision : **14.3.2006**

Ishwari Nand …….. Appellant

Versus

Sawal Devi and another ……. Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting? Yes

For the appellant: Mr. G.D. Verma, Sr. Advocate, with Mr. B.C. Verma, Advocate.

For the respondents: Ms. Reeta Goswami, Vice Mr. V.D. Khidtta, Advocate.

Surjit Singh, Judge

The present appeal is directed against the judgment dated 20.11.1999 of learned Additional District Judge, Shimla, whereby in an appeal, under Section 96 of the Code of Civil Procedure, the judgment / order dated 2.1.1999, passed by the trial Court, rejecting the plaint, has been set aside and the case has been ordered to be tried, heard and disposed of on merits.

Whether reporters of Local Papers may be allowed to see the Judgment? Yes

2. Facts, relevant for the disposal of the appeal, may be noticed. Respondent Sawal Devi filed a suit for declaration that she was owner of certain property and that defendant Ishwari Nand, by playing fraud, got himself entered as a tenant in respect of the said land in the revenue papers and on the strength of those wrong entries, mutation of proprietary rights, under the provision of Section 104 of the H.P. Tenancy & Land Reforms Act, has been attested in his (defendant) favour. The defendant contested the suit and raised a number of preliminary objections. One of such objections pertained to the competence and jurisdiction of the Court to entertain and try the suit. An issue was framed on the basis of that objection and treated as a preliminary one. It appears that the parties chose not to adduce any evidence on the said issue. The learned trial Court heard the arguments and returned the finding that the Civil Court did not have the jurisdiction and ordered the rejection of the plaint.

3. Appeal was filed against the said order of the trial Court, under Section 96 of the Code of Civil Procedure, in the Court of learned District Judge. The learned Additional District Judge accepted the appeal and remanded the matter to the trial Court for disposal after recording findings on all the issues, framed in the matter. This appeal has been filed by defendant Ishwari Nand. His only grievance is that an appeal, under Section 96 of the Code of Civil Procedure, was not competent.

4. I have heard the learned counsel for the parties and gone through the judgments / orders of the trial Court as also the first appellate Court.

5. The issue raised can be examined from two angles. Now, when the trial Court recorded the finding that the Civil Court did not have the jurisdiction to try the suit, it ought to have ordered the return of plaint instead of rejecting it, in view of the provisions of Order 7 Rule 10 of the Code of Civil Procedure. Under these circumstances, the order, even if branded as one rejecting the plaint, is to be taken as an order of return of plaint and an order of return of plaint is appealable, under Order 43 Rule 1 of the Code of Civil Procedure.

6. And even if the order be taken to be one of rejection of plaint, as passed by the learned trial Court, appeal was competent, under Section 96 of the Code of Civil Procedure, because per Section 2(2) of the Code of Civil Procedure, an order rejecting a plaint is included in the definition of decree. This is clear from a bare reading of Section 2(2) of the Code of Civil Procedure. The Hon'ble Supreme Court in **Shamsher Singh vs. Rajinder Prashad and others,** (AIR 1973 SC 2384 para-3) has also held that an order, under Order 7 Rule 11 of the Code of Civil Procedure Code, rejecting a plaint, amounts to a decree, under Section 2(2) of the Code of Civil Procedure, and hence right of appeal is available to the plaintiff.

7. In view of the above discussion, the appeal is dismissed. The parties are directed to appear before the trial Court on 4th April, 2006. Record of the trial Court, with a copy of this order, be returned at once.

March 14, 2006 (BC) **(Surjit Singh)**
Judge